Fair Housing Center

A Project of
FAIR HOUSING OPPORTUNITIES OF NORTHWEST OHIO, INC.
1000 MONROE STREET, SUITE 4 TOLEDO, OH 43624-1954 (419) 243-6163
FAX (419) 243-3536 TDD (419) 243-2135 (800) 248-2840 (419 AREA ONLY)
www.kledoflrc.org

March 9,2004

Docket No. R-1181
Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. NW
Washington, DC 20551

Dear Officials of the Federal Bank and Thrift Agencies:

As a member of the National Community Reinvestment Coalition, the Fair Housing Center urges you to withdraw the proposed changes to the Community Reinvestment Act (CRA) regulations. CRA has been instrumental in increasing access to homeownership, boosting economic development, and expanding small businesses in the nation's minority, immigrant and low- and moderate-income communities. Your proposed changes are contrary to the CRA statute because they will halt progress made in community reinvestment.

The proposed CRA changes will thwart the Administration's goals of improving the economic status of immigrants and creating 5.5 million new minority homeowners by the end of the decade. Instead, the proposed CRA changes would facilitate predatory lending and reduce the ability of the general public to hold financial institutions accountable for compliance with consumer protection laws.

The proposed changes include three major elements: 1) provide streamlined and *cursory* exams for banks with assets between $250 million and $500 million; 2) establish a weak predatory lending compliance standard under CRA; and 3) expand data collection and reporting for small business and home lending. The beneficial impacts of the third proposal are overwhelmed by the damage imposed by the first two proposals. In addition, the federal banking agencies did not update procedures regarding affiliates and assessment areas in their proposal, and thus missed a vital opportunity to continue CRA's effectiveness.

<u>Streamline and Cursory Exams</u>. Under the CRA regulations, large banks with assets of at least $250 million are rated by performance evaluations that scrutinize their level of lending, investing, and *services* to low-and moderate-income communities. The proposed changes will eliminate the investment and service parts of the CRA exam for banks and thrifts with assets between *$250* million and $500 million. The proposed changes would reduce the *rigor* of CRA exams for 1,111 banks that account for more than $387 billion in asssets.

The elimination of the investment and service tests for more than 1,100 banks translates into considerably less access to banking services and capital for underserved communities. For example, these banks would no longer be held accountable under CRA exams for investing in Low Income Housing Tax Credits, which have been a major source of affordable rental housing needed by large numbers of immigrants and lower income segments of the minority population. Likewise, the banks would no longer be held accountable for the provision of bank branches, checking accounts, Individual Development Accounts (IDAs), or debit card services. Thus, the effectiveness of the Administration's housing and community development programs would be dimiished. Moreover, the federal bank agencies will fail to enforce CRA's statutory requirement that banks have a continuing and affirmative obligation to serve credit and deposit need if they eliminate the investment and service test for a large subset of depository institutions.

Predatory Lending Standard: The proposed CRA changes contain an anti-predatory screen that will actually perpetuate abusive lending. The proposed standard states that loans are based on the foreclosure value of the collateral, instead of the ability of the borrower to repay, can result in downgrades in CRA ratings. The asset-based standard falls short because it will not cover many instances of predatory lending. For example, abusive lending would not result in lower CRA ratings when it strips equity without lending to delinquency or foreclosure. In other words, borrowers can have the necessary income to afford monthly payments, but they are still losing wealth as a result of a lender's excessive fees or unnecessary products.

CRA exams will allow abusive lending if they contain the proposed anti-predatory lending standard that does not address the problems of the packing of fees into mortgage loans, high prepayment penalties loan flopping, mandatory arbitration, and numerous abuses. Rigorous fair lending audits and severe penalties on CRA exams for abuse lending are necessary in order to ensure that the new minority home owners served by the Administration are protected, but the proposed predatory lending standard will not provide the necessary protections. In addition, an anti-predatory lending standard must apply to all loans made by the bank and all of its affiliates, not just real-estate secured loans issued by the bank in its "assessment area" as proposed by the agencies. By shielding banks from the consequences of abusive lending, the proposed standard will frustrate CRA's statutory requirements that banks serve low- and moderate-income communities consistent with safety and soundness,

Enhanced data disclosure. The federal agencies propose that they will publicly report the specific census tract location of small businesses receiving loans in addition to the current items in the CRA small business data for each depository institution. This will improve the ability of the general public to determine if banks are serving traditionally neglected neighborhoods with small business loans. Also the regulators propose separately reporting high cost lending (per the new HMDA data requirement starting with the 2004 data).

The positive aspects fo the proposed data enhancements do not begin to make up for the significant harm caused by the first two proposals. Furthermore, the federal agencies are not utilizing the data enhancements in order to make CRA exams more rigorous. The agencies must not merely report the new data, on CRA exams, but must use the new data to provide less weight on CRA exams to high cost loans than prime loans and assign less weight for purchases than loan originators.

Missed Opportunity to Update Exam Procedures. The agencies also failed to close gaping loopholes in the CRA regulation. Banks can still elect to include affiliates on CRA exams at their option. They can thus manipulate their CRA exams by excluding affiliates not Serving low- and moderate income borrowers and excluding affiliates engaged In predatory lending. The game playing with affiliates will end only if the federal agencies *require* that all affiliates be included on exams. Lastly, the proposed changes do not address the need to update assessment areas to include geographic *areas* beyond bank branches. Many *banks* make considerable portions of their loans beyond their branches; this non-branch lending activity will not be scrutinized by CRA exams.

The proposed changes to CRA will directly under-cut the Administration's emphasis on minority homeownership and immigrant access to jobs and banking services. The proposals regarding streamlined exams and the anti-predatory lending standard beaten CRA's statutory purpose of the safe and sound provision of credit and deposit services. The proposed data enhancements would become much more meaningful of the *agencies* update procedures regarding assessment areas, affiliates and the treatment of high *cost* loans and purchases on CRA exams. CRA is simply a law that *makes* capitalism work for ALL AMERICANS. CRA is too vital to be gutted by harmful regulatory changes and neglect. Thank you for your attention in this critical matter.

Sincerely,

Michael P. Marsh, CFRE
Vice President Development and Public Relations